

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-49**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of Tennessee sales and use tax to the sale of certain medical supplies.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;

- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] requests a ruling on whether the items described below are subject to sales and use tax. All of the items are sold under an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee. A licensed pharmacist, employed by the taxpayer, issues the items in accordance with the physician's prescription. All items are sold directly to the patient, and the patient or a caregiver administers the drugs in the patient's home. A sterile environment is needed to prevent infection at the site where the drug enters the body. Disinfectants are used to prevent infection at the entry site.

1. Nutren and Nutrent are enteral nutrition products for patients who are unable to ingest food by mouth. A common cause of this condition would be a malfunction of the throat or the esophagus. These products are pumped into the patient's stomach through a tube that has been inserted through the abdominal wall.
2. Parenteral pumps and I.V. stands are items used to administer total parenteral nutrition ("TPN") products. TPN is a therapy used by patients who could no longer ingest or digest solid foods. Usually this condition is a result of removal of a large portion of the intestine. TPN products are delivered intravenously. The I.V. stand and pump are necessary for the parenteral nutrition system to work properly.
3. Extension sets (30" and 45") and administration sets are disposable tubes used to connect the cannula (needle) to either a pump or an I.V. bag. A pump or bag is needed to propel the prescription drugs/medications into the patient's body. Since the medication is administered at home, the extension sets also give the patients a wider range of movement during therapy.
4. I.V. start kits consist of a cannula (needle), disinfectant, and sometimes a local anesthetic. These items are used to insert the cannula into a vein. This becomes the entry site where prescription drugs are infused into the patient's body. These items are disposable. The disinfectant consists of an alcohol wipe which costs a very small amount in comparison to the cannula and the anesthetic.

5. Alcohol preps and transparent dressings are components of kits used to maintain a sterile environment in the area where catheters or needles were inserted into a patient's vein. The alcohol preps could also be used to disinfect the area where a patient prepared or mixed the medication prior to infusion. Dressings are applied to prevent infection of the entry site.

6. Central line dressings and change kits are used to change the dressing and disinfect the area around a "central line." A central line is run intravenously from a point somewhere near the breastbone, through approximately six or seven inches of vein to a point approximately two to three inches from the point where the vein enters the heart. Long-term I.V. therapy is administered through the central line because it is semi-permanent and does not need to be moved periodically. Due to the proximity to the heart, the wound surrounding the central line and any tubing or equipment that connected to the central line have to be sterile. Infection of a central line would be extremely dangerous to the patient.

7. Gloves are used by the patient to prevent contamination of the nutritional products during the mixing process prior to infusion.

8. Storage units are small, sterile refrigerators used to prevent the spoilage of perishable medications.

ISSUE

Whether these items of tangible personal property, as described by the taxpayer, are subject to sales and use tax when sold as provided in the facts.

RULINGS

1. Nutren and Nutrent are exempt.
2. Parenteral pumps and I.V. stands are exempt.
3. Extension sets (30" and 45") and administration sets are exempt.
4. I.V. start kits are exempt.
5. Alcohol preps and transparent dressings are taxable.
6. Central line dressings and change kits are taxable.
7. Gloves are taxable.
8. Storage units are taxable.

ANALYSIS

1. Under the Retailers' Sales Tax Act, TENN. CODE ANN. §67-6-101 et. seq., the sale of tangible personal property is generally subject to sales and use tax unless an exemption applies. Several specific exemptions apply to the sale of medical items. One specific exemption covers prescription drugs and medicines as follows:

(a) There is exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.

(b) There is also exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

TENN. CODE ANN. §67-6-320(a) and (b). To fall under this exemption, the item must be: 1) a drug or medicine; 2) prescribed by a physician; and 3) sold to a physician or issued by a pharmacist to an individual.

Under the facts provided, Nutren and Nutrent are prescribed by a physician and issued by a pharmacist to an individual. In addition, the Department has taken the position that enteral and parenteral nutrients qualify as prescription drugs which fall under this exemption. See *Nutritional Support Services, Ltd. v. Taylor*, 803 S.W.2d 213 (Tenn. 1991) (noting that the Department agreed the prescription drug exemption was applicable).

Accordingly, Nutren and Nutrent are exempt from sales and use tax under these facts.

2. Another sales and use tax exemption covers the sale or repair of prosthetics. TENN. CODE ANN. §67-6-314(5). A device is prosthetic if it replaces a missing body part or augments the performance of a natural function. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 139 (Tenn. 1988). *Cordis* held that an implantable cardiac pacemaker is a prosthesis because it replaces or augments the missing or reduced body function of providing a stimulus for the beating of a heart. *Id.* *Cordis* also held that a hydrocephalus valve system is a prosthesis because it is an artificial part which augments the natural flow of cerebral spinal fluid from the brain into the bloodstream. *Id.*

Parenteral pumps and I.V. stands are items used to administer total parenteral nutrition products. TPN products are used by patients who can no longer ingest or digest solid foods, usually because a large portion of the intestine has been removed. TPN products are delivered intravenously. The facts expressly

provide that the I.V. stand and pump are both necessary for the parenteral nutrition system to work properly.

Under these circumstances, the I.V. stand and pump are part of a system which replaces or augments the performance of the body's digestive system. Accordingly, these items are exempt under TENN. CODE ANN. §67-6-314(5).

3. and 4. Another sales and use tax exemption covers certain items which are used to administer prescription drugs or medicines:

(c) There is also exempt from the tax imposed by this chapter disposable medical supplies such as bags, tubing, needles and syringes dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state which are used for the intravenous administration of any prescription drug or medicine and which come into direct contact with the prescription drug or medicine. This exemption applies only to supplies to be used in the treatment of a patient outside of a hospital, skilled nursing facility or ambulatory surgical treatment center.

TENN. CODE ANN. §67-6-320(c).

Extension sets (30" and 45") and administration sets are tubes used to connect a cannula (needle) to either a pump or an I.V. bag for the purpose of intravenous administration of prescription drugs or medicines. They clearly come into direct contact with the drug or medicine. The facts provide that these items are disposable and are dispensed by a licensed pharmacist in accordance with a doctor's prescription for use in the treatment of a patient at home. Thus, these items meet all of the requirements for exemption under TENN. CODE ANN. §67-6-320(c).

Similarly, I.V. start kits consist of a cannula, disinfectant, and sometimes a local anesthetic. As with the extension sets, the cannula is a medical supply used in the intravenous administration of prescription drugs or medicines and meets all of the requirements for exemption under TENN. CODE ANN. §67-6-320(c). Additionally, the local anesthetic, when included, would qualify as a prescription drug or medicine under TENN. CODE ANN. §67-6-320(a). Finally, the disinfectant generally would not qualify for an exemption. However, the facts provide that the cost of the alcohol wipe is very small in comparison to the cannula and the anesthetic. Under these circumstances, the disinfectant is incidental to the sale of an exempt item, and it will not cause the sale to become taxable. Thus, the I.V. start kits are exempt from sales and use tax.

5. through 8. Under the facts provided, the remaining items (alcohol preps, dressings, change kits, gloves, and storage units) do not fall under any

exemption and are therefore subject to sales and use tax. While taxing statutes are construed in favor of the taxpayer, exemptions are construed strictly against the taxpayer and in favor of the state. *Quaker Oats Co. v. Jackson*, 745 S.W.2d 269 (Tenn. 1989); *Phillips & Buttorff Mfg. v. Carson*, 217 S.W.2d 1 (Tenn. 1949). Specifically, TENN. CODE ANN. §67-6-320(a) is not to be given a liberal construction when determining what items qualify as a drug or medicine. *Feldman v. Huddleston*, 912 S.W.2d 161 (Tenn. Ct. App. 1995). Although these items are prescribed by a doctor, none appear to qualify as a drug or medicine under TENN. CODE ANN. §67-6-320(a).

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 12-8-98